

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date 8/5/21</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) NR 500-520, Environmental Protection – Solid Waste Management</p>	
<p>4. Subject Revisions to chs. NR 500 to 520 related to coal combustion residual landfills; WA-17-18</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected s. 20.370(4)(dg)</p>
<p>7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input checked="" type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). One-time costs for plan of operation modification development and review: \$783,000. [Approximately \$600,000 paid among four electric utility companies to private consultants to prepare plan of operation modifications, and approximately \$183,000 paid by utilities to the department for plan review fees.] New annual costs for annual report submittals: \$162,000. [Approximately \$150,000 paid annually among four electric utility companies to private consultants to conduct inspections and prepare reports, and approximately \$12,000 paid annually to the department for annual report review fees.] Ongoing costs for groundwater monitoring: \$100,000. [Estimated amount paid to private consultants for annual groundwater monitoring in accordance with current federal rule. The cost is expected to be the same under the proposed rule.]</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule The proposed rule will amend portions of chs. NR 500 to 520, Wis. Adm. Code, to incorporate new federal rules for the regulation of coal combustion residual (CCR) landfills. CCR, often called coal ash, is created when coal is burned by power plants to produce electricity. Specifically, the proposed rule would incorporate federal requirements for CCR landfills, such as: location restrictions, design criteria, operating criteria, groundwater monitoring and corrective action criteria, closure and post-closure care and recordkeeping, notification, and posting of information. The proposed rule would allow Wisconsin to seek approval of a state CCR permit program from the U.S. Environmental Protection Agency (EPA). This would allow CCR landfills to comply with a single consolidated rule rather than both state and federal rules. Where federal rules and Wisconsin rules differ, Wisconsin rules are required by EPA to be at least as protective as the federal rules.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.</p>	

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In addition to general notice of the comment period in the Administrative Register and through web postings, the department directly contacted the following entities when requesting economic impact comments:

- Wisconsin Towns Association and League of Wisconsin Municipalities
- Wisconsin Utilities Association
- Electric utility companies currently operating CCR landfills
- Milwaukee Riverkeeper
- Sierra Club – Wisconsin Chapter
- Clean Wisconsin

13. Identify the Local Governmental Units that Participated in the Development of this EIA.
No governmental units submitted comments on the EIA.

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Impact on businesses/business sectors: Businesses directly affected by this rule are four electric utility companies that own and operate six CCR landfills. However, because the CCR landfill facilities implemented federally required rules prior to this rulemaking, the impact would be minimal to moderate. Implementation and compliance costs for utility companies would likely include:

- One-time fees to implement plan of operation modifications that incorporate the requirements of new CCR rules:
6 landfills * \$30,500 plan review fees = \$183,000
- Consultant costs to prepare the plan of operation modifications for initial permitting:
6 landfills * \$100,000 consultant fees = \$600,000
- Annual fees for Department review of the annual report:
6 landfills * \$2,000 = \$12,000 annually
- Consultant costs to conduct an annual inspection and prepare an annual report submittal (professional engineer inspection and report, dust control report, groundwater monitoring and corrective action report):
6 landfills * \$25,000 consultant fees = \$150,000/year
- Indeterminant cost savings because of reduction in duplicate state and federal regulations (consolidated inspections, reporting, and plan approvals process).

Existing annual licensing fees and landfill tipping fees (currently \$0.50/ton) for CCR landfills would not be affected by this rule. CCR landfills are currently exempt from or have reduced tipping fees for disposal of ash. Overall total fees per ton of ash are \$0.497/ton, compared to total tipping fees for municipal solid waste of \$12.997/ton.

The Wisconsin Utilities Association indicated during the EIA public comment period that CCR landfills incur additional compliance costs of approximately \$100,000 annually, in particular for groundwater monitoring. The compliance costs are ongoing costs for impacted businesses and are not triggered by this rule because the monitoring is already conducted to comply with federal rules. The Association also commented that the rule will result in lower compliance, inspection, and reporting costs that are expected to be approximately equal to the ongoing state compliance costs. They estimated that the net economic impact of the proposed rule implementation and compliance costs will be neutral.

Impact on public utility rate payers: Because the CCR landfill facilities have implemented federally required rules prior to this rulemaking, which incorporates federal requirements into state laws, the department does not expect any implementation and compliance costs of this rule to impact public utility rate payers. The department is unable to determine if costs were previously passed on to utility rate payers.

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Impact on local governmental units: The department does not expect any implementation and compliance costs of this rule to impact local governmental units.

Fiscal Impact and Impact on the State's economy: The rule would require additional staff to implement the proposed rule, at least initially. The department is preparing a request for a temporary hydrogeologist project position for approximately one year to review plan submittals resulting from this rule. The hydrogeologist would review CCR landfill plan of operation modifications associated with the new CCR state program, along with existing engineer staff and plan review experts. This one-time additional project position cost (spread over approximately 12 months) would be approximately \$100,000 for salary and fringe benefits. However, the department does not expect any fiscal impact to the state because all costs are expected to be covered by plan review fees paid by impacted utility companies. The department does not expect any implementation and compliance costs of this rule to impact the state's economy adversely.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Benefits: As the state's CCR landfill operators have indicated to the department, implementing the rule would allow CCR landfill operators to apply one set of consolidated rules and interact with one regulatory agency. Currently, where federal and state rules differ, operators must comply with both sets of rules and work with both state and federal regulators for compliance with codes. Under this rule, the department will inspect all aspects of the landfills relative to a single code that encompasses both state and federal requirements to ensure proper management to protect human health and the environment.

Alternatives: The department evaluated an option to not pursue including federal requirements in Wisconsin rules because seeking approval of a state CCR permit program is optional. However, this option would continue to mean that CCR landfills in Wisconsin would be regulated under both federal rules and current Wisconsin rules. Where rules differ, CCR landfills must meet both federal and state laws. This results in duplicate regulation, inefficient oversight of these sites and additional compliance costs for the facility operators.

16. Long Range Implications of Implementing the Rule

Similar to the benefits noted above, the department will continue to regulate CCR landfills and, under this rule, incorporate all requirements that meet nationwide CCR landfill management standards for protection of human health and the environment. CCR materials contain contaminants like mercury, cadmium and arsenic. Without proper management, these contaminants can pollute waterways, ground water, drinking water, and the air. By creating Wisconsin rules that are at least as protective as the federal rule, the department will continue to address risks from improper disposal of CCR.

17. Compare With Approaches Being Used by Federal Government

The proposed rule revisions will be consistent with federal CCR rules (40 CFR 257, Subpart D) in order for Wisconsin to seek approval of a state CCR permit program. Currently, some portions of chs. NR 500 to 520, Wis. Adm. Code, are already consistent with federal rules or may be considered at least as protective as federal rule for CCR landfills.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

States have the option to seek approval from the EPA of a state CCR permit program that contains rules at least as protective as the federal rule. If a state chooses not to create its own permit program or to create a partial program, regulatory authority will continue under the EPA for all or a portion of CCR disposal activity. Note: Wisconsin is seeking a partial permit program, for CCR landfills only (i.e., not for CCR surface impoundments) because utilities in

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Wisconsin have already discontinued using impoundments for disposal of CCR or have plans to discontinue utilizing their impoundments in the next few years, and no new impoundments are planned. Wisconsin does not currently regulate CCR surface impoundments under its solid waste management rules.

- Illinois will be seeking approval for a state permit program for CCR surface impoundments only, not landfills.
- Iowa is undecided if or when it will seek approval for a state permit program.
- Michigan is seeking approval for both surface impoundments and landfills and submitted an application to EPA in April 2020 for permit program approval.
- Minnesota will not be seeking permit program approval.
- Other states in EPA Region 5 are doing the following: Ohio is in the preliminary stages of rulemaking and will be seeking approval for both surface impoundments and landfills. Indiana recently indicated to EPA that it would be seeking approval.

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